IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-08-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE K. MOHAN RAM

HABEAS CORPUS PETITION NO.278 OF 2007

Rasenthiram
S/o. Rasathirai .. Petitioner

Vs.

State of Tamil Nadu,
Rep. by Deputy Secretary
to Government,
Public (SC) Department,
Fort St. George, Chennai 9. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Habeas Corpus to call for the records of the respondent made in GO.No.SR.111/264-2/2007 dated 7.2.2007, quash the same and direct the respondent to produce the body of the detenu Elango, son of Gnanespackiyam, presently detained in Special Camp for Srilankan Refugees at Chinglepet before this Court and set him at liberty.

For Petitioner : Mr.B. Kumar
Senior Counsel for
Mr.T.M.C. Kaushik

For Respondent : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

P.K. MISRA, J

Present Habeas Corpus Petition has been filed by the father-in-law of P. Illango. It is claimed that the said P. Illango, hereinafter referred to as "the detenu" is a citizen of Great Britain being the passport-holder of United Kingdom of Great Britain and Northern Ireland with Passport No.302019733. The said

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passport was issued on 22.10.202 and it is valid till 22.10.2012. It is also stated that he came to India by obtaining Visa at London from the Indian High Commission, London. While the matter stood thus, the detenu was arrested on 20.1.2007 on the allegation that he had committed offences under Sections 465, 468, 471 and 420 IPC and a case has been registered as Sri Ramachandra Medical College Police Station Cr.No.97 of 2007. Thereafter, by order dated 13.2.2007 in Crl.M.P.No.392/2007, the Principal Sessions Judge, Tiruvallur passed a conditional order directing release of the detenu. However, soonafter the detenu came out of the Central Prison, Puzhal, he was taken into custody by the Sub-Inspector and lodged in the Special Camp for Sri Lankan Refugees at Chengalpet and at that stage the order dated 7.2.2007 has been passed by the State Government in the purported exercise of power conferred under Section 3(2)(3) of the Foreigners Act, 1946 read with Notification of Government of India, Ministry of Home Affairs, No.4/3/56(1) F-1 dated 19.4.1958 that the detenu shall reside in the Special Camp for Sri Lankan immigrants / refugees, identified and located by the Collector of Kancheepuram District at Chengalpet. It was indicated that such detenu shall not leave the boundaries of such Special Camp, except with the permission of the Collector. The said order dated 7.2.2007 is being challenged in the present Habeas Corpus Petition by the father-in-law of the detenu.

2. Learned counsel for the petitioner has contended that the so called Sri Lankan Refugees Camp is nothing but a prison and the order directing that the detenu shall remain within such Special Camp in fact amount to an order of detention contemplated under Section 3(2)(g) of the Foreigners Act, 1946, which power can be exercised only by the Central Government and not by the State Government. Validity of the detention order is also challenged on the alternative ground that the State Government has erroneously assumed that detenu is a Sri Lankan National whereas the detenu is in fact a British citizen being a British Passport-holder. The order having been passed on erroneous assumption without application of mind is liable to be quashed.

3. A counter affidavit has been filed on behalf of the State Government. In such counter affidavit it is not denied that the detenu was the holder of British passport. However, it is stated that the Special Camp is actually notified as a Camp for foreigners and it is not meant exclusively for Sri Lankan refugees or foreigners of Sri Lankan origin, but it is meant for all foreigners. It is stated that the order has been passed in view of Section 3(2)(e) of the Foreigners Act and the order is justified as the detenu had committed offence under Sections 465, 468, 471 and 420 IPC. In the counter affidavit, it is also denied that the Special Camp has to be equated with a jail and, therefore, direction to stay within the Special Camp cannot be construed as arrest and detention or confinement as contemplated under Section 3

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(2)(g) and, on the other hand, it is justified under Section 3(2)(e) of the Foreigners Act. It is further stated that within the Special Camp many facilities such as television, tape-recorder, fans etc., are provided to enable the inmates to lead normal life and the visitors are allowed from 10.00 AM to 5.00 PM.

4. So far as the first contention raised by the petitioner to the effect whether a Special Camp is meant only for Sri Lankan refugees or foreigners of Sri Lankan origin alone is concerned, learned Addl. Public Prosecutor has produced several orders relating to establishment of Special Camp. It appears that initially there was Special Camp at different places and on the basis of the request of the Inspector General, with a view to accommodate inmates of such Special Camp, the Government notified Sub-Jail premises at Chengalpattu as a Special Camp to accommodate Sri Lankan Tamils. Such aspect is clear from G.O.No.SR.III.278--5/93 dated 8.6.1993. Subsequently, by G.O.Ms.No.1816 dated 31.12.2004, on the basis of the suggestion made by the Additional Director General of Police, a portion of such Special Camp, Room Nos.1 to 6 of such Camp at Chengelpet, was re-designated as the Camp to lodge Foreign Nationals other than Sri Lankan Tamils. It is thus clear that the Special Camp at Chengelpat is a combined Camp not only for the foreigners of Sri Lankan origin but also for other foreigners having other Nationality.

5. Second contention of the petitioner to the effect that the order directing the detenu to stay within the Special Camp in fact amounts to an order under Section 3(2)(g) of the Foreigners Act, is not acceptable in view of the decision of this Court in 1995-2-L.W.(Crl.) 690(2) (KALAVATHY, ETC. v. STATE OF TAMIL NADU & OTHERS). In view of such Division Bench decision, which was subsequently followed in H.C.P.No.1038 of 2003 dated 14.11.2003 and the ratio of which has been now accepted by the Full Bench, this contention of the petitioner cannot be accepted.

6. Last contention of the petitioner, however, appears to be on a stronger footing. The impugned order passed by the State Government is extracted hereunder in extenso :-

> "... In exercise of the powers conferred by Section 3(2)(3) of Foreigners Act, 1946 (Central Act 31 of 1946), read with the Notification of the Government of India, Ministry of Home Affairs, No.4/3/56 (1) F-1 dt. 19th April 1958 for regulating the continued presence of the foreigner, Thiru Elango S/o. Ganespackiyam of Sri Lanka, who is a Sri Lankan National, the Governor of Tamilnadu hereby orders that the said Thiru Elango S/o. Ganespackiyam, shall reside in the Special Camp for Sri

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Lankan immigrants/refugees identified and located by the Collector of Kancheepuram District at Chengalpattu.

2. The said Sri Lankan Tamil Thiru Elango S/o. Ganesapackiyam shall not leave the boundaries of the special camp for Sri Lankan immigrants / refugees identified and located by the Collector, Kancheepuram District at Chengalpattu except with the permission of the Collector."

7. A fair reading of the said order clearly indicates that the authority which passed the order of detention has proceeded under the assumption that the detenu is a Sri Lankan National. The fact that the detenu is a British Citizen being the holder of GBR Passport No.302019733, is apparently not considered by the authority. It is no doubt true that the Special Camp, as already found, is not exclusively meant for Sri Lankan National, but also can be used as Special Camp for other foreigners and as such any other foreigner can also be directed to stay within such Camp provided the other conditions contemplated under Sections 3(2)(e) are satisfied. However, a perusal of the impugned order indicates that the appropriate authority, namely, the State Government, has not at all considered the question as to whether the person to be detained was a Sri Lankan Passport-holder or a Great Britain Passport-holder.

8. In our considered opinion, it is a relevant circumstance and by not considering this aspect at all, it can be said that there has been non-application of mind on the part of the authority concerned.

9. For the aforesaid reason, the impugned order passed cannot be sustained and it is bound to be quashed. However, it is made clear that notwithstanding passing of such order, it would be open to the concerned authorities to consider the matter afresh and pass any fresh order if the relevant facts and circumstances so necessitate.

10. During the course of hearing, learned counsel for the petitioner has submitted that the detenu had been released on bail. In the interest of justice, we feel it necessary to direct that in addition to the conditions imposed by the concerned court, the detenu is also required to report before the concerned Court at 10.30 AM on every working day.

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11. Subject to the aforesaid observations and directions, the Habeas Corpus Petition is allowed to the extent indicated.
Dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Deputy Secretary to State of Tamil Nadu,
   Public (SC) Department,
   Fort St. George, Chennai 9.

2. The Public Prosecutor,
   High Court, Madras.

3. The Officer-in-charge
Special camp for Srilanka Refugees
Chengalpet

4. The Principal Sessions Judge,
Tiruvallur District.

+ one cc to Mr. T.M.C. Koushick, Advocate sr o. 52048

ad(co)
nm(21.08.07)

ORDER IN HCP.NO.278/2007

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